

FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN

OTT MANAGEMENT, LLC,)
)
Plaintiff,)
)
v.)

Civil No. 2008-46

VIRGIN GRAND ESTATES)
HOMEOWNERS ASSOCIATION, JOHN)
DALY, JOHN DALY PENSION AND)
P/S TRUST, MICHAEL L. OXMAN,)
ARCHITECT MICHAEL L. OXMAN AND)
ASSOCIATES, LTD., JOHN DALY AS)
PRESIDENT OF THE VIRGIN GRAND)
ESTATES HOMEOWNERS)
ASSOCIATION, and JOHN DALY AS)
A MEMBER AND CHAIRMAN OF THE)
BOARD OF DIRECTORS OF THE)
VIRGIN GRAND ESTATES)
HOMEOWNERS ASSOCIATION, DON)
RIFENBERG AS A MEMBER OF THE)
BOARD OF DIRECTORS OF THE)
VIRGIN GRAND ESTATES)
HOMEOWNERS ASSOCIATION, JOHN)
BREGO AS A MEMBER OF THE BOARD)
OF DIRECTORS OF THE VIRGIN)
GRAND ESTATES HOMEOWNERS)
ASSOCIATION and CINDY BOTT AS)
A MEMBER OF THE BOARD OF)
DIRECTORS OF THE VIRGIN GRAND)
ESTATES HOMEOWNERS)
ASSOCIATION,)

Defendants.)

VIRGIN GRAND ESTATES)
HOMEOWNERS ASSOCIATION, LLC,)
)
Third Party-Plaintiff,)

v.)

Peter Fabbio,)
)
Third-Party)
Defendant.)

ATTORNEYS:

Karin A. Bentz, Esq.
Christopher A. Kroblin, Esq.
St. Thomas, U.S.V.I.
For the plaintiff.

Nancy D'Anna, Esq.
St. Thomas, U.S.V.I.
For defendants Virgin Grand Estates Homeowners Association, John Daly, John Daly Pension and P/S Trust, John Daly as President of the Virgin Grand Estates Homeowners Association, and John Daly as a Member and Chairman of the Board of Directors of the Virgin Grand Estates Homeowners Association, Don Rifenberg, as a Member of the Board of Directors of the Virgin Grand Estates Homeowners Association, John Brego, as a Member of the Board of Directors of the Virgin Grand Estates Homeowners Association, and Cindy Bott, as a Member of the Board of Directors of the Virgin Grand Estates Homeowners Association.

Samuel H. Hall, Jr., Esq.
St. Thomas, U.S.V.I.
For defendants Michael L. Oxman and Architect Michael L. Oxman and Associates, Ltd.

ORDER

GÓMEZ, C.J.

The plaintiff in this matter, OTT Management, LLC ("OTT"), commenced this eight-count action in the Superior Court of the Virgin Islands. According to the complaint, OTT is a Texas corporation that owns certain real property on St. John, U.S. Virgin Islands. OTT brought this action against the various defendants in this matter (the "Defendants"), alleging, among other things, that the Defendants unlawfully prevented OTT from

undertaking certain construction work on its property and imposed unreasonable fines on OTT.

In March, 2008, certain Defendants removed this action to this Court, alleging diversity of citizenship. See 28 U.S.C. § 1332. Those same defendants thereafter filed an answer to the complaint and a two-count counterclaim against OTT. Those defendants also filed a one-count third-party complaint against third-party defendant Peter Fabbio.

On May 30, 2008, the magistrate judge entered an order, stating that "[c]ounsel are negotiating a remand to the Superior Court." (Order, May 30, 2008.) OTT thereafter filed a motion to remand this action for lack of jurisdiction, asserting that "counsel for [the Defendants] stated that she removed the case to District Court in error and admitted that jurisdiction is lacking." (Pl.'s Mot. to Remand 1.)

The magistrate judge subsequently entered another order, indicating that "[b]y consent of the parties the matter will be remanded to the Superior Court, there being no claim to federal jurisdiction." (Order, June 26, 2008.) The Defendants thereafter filed a notice in which they indicated that they did not oppose the motion to remand. On July 14, 2008, the magistrate judge entered an order, remanding this action to the Superior Court. (See Order July 14, 2008.)

Title 28, Section 636(b)(1)(A) of the United States Code

provides:

[A] judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

28 U.S.C. § 636(b)(1)(A).

In *In re United States Healthcare*, the Court of Appeals for the Third Circuit explained that the above provision

does not in terms preclude a magistrate judge from hearing and determining a motion to remand a case to a state court. Nevertheless, because a remand order is dispositive insofar as proceedings in the federal court are concerned, the order is the functional equivalent of an order of dismissal for purposes of that section. While we recognize that after a remand a case may go forward in the state court, still the order for remand conclusively terminates the matter in the federal court against the will of the party who removed the case.

159 F.3d 142, 145 (3d Cir. 1998). Based on that explanation, the Third Circuit held that "a magistrate judge may not, without the consent of the parties, decide" a motion to remand, reasoning that "it is clear that as far as the federal courts are concerned, a remand order is dispositive of all the claims and defenses in the case as it banishes the entire case from the federal court." *Id.* at 145-46. Accordingly, the *United States*

Healthcare Court issued a writ of mandamus, directing the magistrate judge to vacate an order remanding the case to the Superior Court of New Jersey. See *id.* at 147.

Here, the record does not reflect that all parties in this action consented to the magistrate judge's authority to remand this case to the Superior Court. As a consequence, the magistrate judge's July 14, 2008, order will be vacated, and the Court will conduct a *de novo* review of OTT's motion. See, e.g., *Williams v. Beemiller, Inc.*, 527 F.3d 259, 266 (2d Cir. 2008) (citing *Vogel v. U.S. Office Prods. Co.*, 258 F.3d 509, 517 (6th Cir. 2001) (concluding that "a remand order is the functional equivalent of an order to dismiss" and thus is "dispositive . . . and can only be entered by district courts"); *First Union Mortgage Corp. v. Smith*, 229 F.3d 992, 996 (10th Cir. 2000) (concluding that a remand order is "a final decision or dispositive motion that must ultimately be made by the district court in order to survive Article III scrutiny")).

A federal court has the obligation to address a question of subject-matter jurisdiction *sua sponte*. See *Employers Ins. of Wausau v. Crown Cork & Seal Co., Inc.*, 905 F.2d 42, 45 (3d Cir. 1990). In particular, in removal cases, "[a] district court may remand a case 'if at any time before final judgment it appears that the district court lacks subject matter jurisdiction.'" *Carr v. American Red Cross*, 17 F.3d 671, 680 (3d Cir. 1994) (quoting

28 U.S.C. § 1447(c)). As a general matter, a district court is required to give the parties notice and an opportunity to be heard before remanding a removed case to state court. See *Mints v. Educational Testing Serv.*, 99 F.3d 1253, 1259 n.2 (1996) ("It would be a rare case in which a district court would be justified in remanding a case without giving notice to the parties that it intended to do so and giving them an opportunity to be heard on the issue.") (citing *Liberty Mut. Ins. Co. v. Ward Trucking Corp.*, 48 F.3d 742, 750 (3d Cir. 1995)).

As noted above, the only reason asserted by OTT in support of its motion is the Defendants' purported admission at a status conference before the magistrate judge that the Defendants' removed this action to this Court "in error and . . . that jurisdiction is lacking." (Pl.'s Mot. to Remand 1.) OTT does not assert that it is not completely diverse from all of the Defendants, or that its claims do not assert a federal question. The Defendants, in turn, have not briefed the issue of subject-matter jurisdiction, indicating in their notice only that they do not oppose OTT's motion.

The premises considered, it is hereby

ORDERED that the magistrate judge's July 14, 2008, order remanding this action is **VACATED**; and it is further

ORDERED that all parties in this action, no later than **2:00 p.m. on Monday, July 28, 2008**, shall file briefs, with citations

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to appropriate authority, regarding whether subject-matter
jurisdiction in this Court is appropriate.

S_____
CURTIS V. GÓMEZ
Chief Judge